

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERTO ROJAS, by and through  
GUARDIAN AD LITEM SERGIO  
ROJAS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,

Defendants.

No. 2:21-cv-01086 DAD AC

ORDER

Plaintiff is a state prisoner proceeding by and through his appointed guardian ad litem in this civil rights action, which was removed from state court on June 18, 2021. All parties are proceeding through counsel. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Currently pending is defendants' motion to dismiss which is scheduled for a hearing before the undersigned on January 17, 2024. Plaintiff filed his opposition on December 29, 2023 along with a motion for an extension of time to file the untimely opposition due to the excusable neglect of counsel. ECF Nos. 17, 18. Although defendants did not file a formal opposition to the motion for an extension of time, they did indicate in their reply brief that the motion to dismiss

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1 should be granted on the basis of the untimely filing alone. See ECF No. 19 at 2 n. 2 (citing  
2 Local Rule 230(c)).

3 **I. Motion for Extension of Time**

4 Plaintiff requests an extension of time to file the opposition to the motion to dismiss based  
5 on a calendaring error created by counsel's reliance on a "trusted and well-known treatise on  
6 Federal Civil Procedure Before Trial." ECF No. 17 at 1. The treatise indicated that plaintiff's  
7 opposition was due 14 days before the scheduled hearing, or, in this case, by January 3, 2024.  
8 Plaintiff submits that this calendaring error constitutes excusable neglect under Rule 6(b) of the  
9 Federal Rules of Civil Procedure to justify extending the deadline to oppose the motion to  
10 dismiss.

11 **II. Legal Standards**

12 Rule 6(b) of the Federal Rules of Civil Procedure allows a court to grant an extension of  
13 time, after a deadline has expired, for good cause and "if the party failed to act because of  
14 excusable neglect." Fed. R. Civ. P. 6(b)(1)(B). The Ninth Circuit has held that the Supreme  
15 Court's analysis of excusable neglect in Pioneer Investment Services Co. v. Brunswick Associates  
16 Ltd. Partnership, 507 U.S. 380 (1993), applies in this context. See Bateman v. United States  
17 Postal Serv., 231 F.3d 1220, 1223–24 (9th Cir. 2000). In Pioneer, the Supreme Court adopted a  
18 "flexible understanding" of excusable neglect and identified four basic factors to be considered by  
19 the court when ruling on a request to extend a filing deadline. Pioneer, 507 U.S. at 389. These  
20 factors include: 1) the danger of prejudice to the opposing party; 2) the length of the delay and its  
21 impact on court proceedings; 3) the reason for the delay; and, 4) the good faith of the moving  
22 party. Pioneer, 507 U.S. at 395.

23 **III. Analysis**

24 Applying the factors in Pioneer, the court finds that plaintiff's delay of 16 days is a very  
25 short period of time in light of the history of this case. Moreover, this delay does not have any  
26 impact on the scheduled hearing on the motion to dismiss or on the overall proceedings in this  
27 case. This matter is at an early stage of proceedings, and the court has not yet issued a scheduling  
28 order or set any litigation deadlines.


1 Secondly, while a calendaring error has been described as a “weak justification for an  
2 attorney’s delay,” Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1262 (9th Cir. 2010), it is  
3 the type of error that has supported an extension of time. See Pincay v. Andrews, 389 F.3d 853  
4 (9th Cir. 2004). Counsel’s calendaring error was based on his reliance on a secondary legal  
5 resource that he had relied upon in the past to accurately determine response deadlines. In that  
6 light, counsel’s reason for delay was justified.

7 The third factor is whether movant acted in good faith. Based on counsel’s expeditious  
8 attempt to file the opposition after discovering his mistake, the court finds that there is no bad  
9 faith demonstrated in this case. See Bateman, 231 F.3d at 1225 (finding that counsel’s “errors  
10 resulted from negligence and carelessness, not from deviousness or willfulness”).

11 The last factor to consider is prejudice to the opposing party. The only prejudice to  
12 defendants is having to appear at the hearing on the motion to dismiss. See Local Rule 230(c)  
13 (stating that “[n]o party will be entitled to be heard in opposition to a motion at oral arguments if  
14 opposition to that motion has not been timely filed). Plaintiff emphasizes that the extension of  
15 time should be granted to allow this case to be resolved on the merits. In analyzing excusable  
16 neglect under Rule 60(b) of the Federal Rules of Civil Procedure, the Ninth Circuit has found that  
17 the loss of a quick victory and potentially having to reschedule a trial date were insufficient  
18 prejudice to justify denying an extension of time. Bateman, 231 F.3d at 1225; see also  
19 Ahanchian, 624 F.3d at 1262 (emphasizing that “[a]t most, they would have won a quick but  
20 unmerited victory, the loss of which we do not consider prejudicial.”). Therefore, the court does  
21 not consider prejudice to defendants to be dispositive.

22 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for an extension of time  
23 to file his opposition to the motion to dismiss (ECF No. 17) is granted.

24 DATED: January 12, 2024

25   
26 ALLISON CLAIRE  
27 UNITED STATES MAGISTRATE JUDGE  
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